

PRE-APPEAL BRIEF REQUEST FOR REVIEW

Docket Number (Optional)

0889498445

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on _____

Signature _____

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Application Number

10/774,638

Filed

July 2, 2002

First Named Inventor

Burdett, Gregory

Art Unit 2132

Examiner Herring, Virgil A.

Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.

This request is being filed with a notice of appeal.

The review is requested for the reason(s) stated on the attached sheet(s).

Note: No more than five (5) pages may be provided.

I am the

☐ applicant/inventor.☐ assignee of record of the entire interest.
See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed.
(Form PTO/SB/96)☐ attorney or agent of record.
Registration number _____☒ attorney or agent acting under 37 CFR 1.34.Registration number if acting under 37 CFR 1.34 57,089

Signature

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Typed or printed name

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July 21, 2008

Date

NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below*.

☐ *Total of _____ forms are submitted.

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent Application of: Burdett, Gregory; Mistry, Nalin; Fung, Bryant;

Serial No. : **10/774638**

Group Art Unit : **2132**

Filed : **July 2, 2002**

Examiner : **Herring, Virgil A.**

For : **Method and Apparatus for Accelerating CPE-based VPN
Transmissions Over a Wireless Network**

Date : **July 21, 2008**

Docket No. : **08894984US**

Mail Stop: AF

The Honorable Commissioner of Patents and Trademarks,
P.O. Box 1450
ALEXANDRIA, VIRGINIA 22313-1450
UNITED STATES OF AMERICA

Pre-Appeal Brief Request For Review

Sir:

Pursuant to 1296 Off. Gaz. 2 (July 12, 2005), Applicants request review of the final rejection of claims 1-12 in the above-identified application. No amendments are being filed with this Request. This Request is being filed with a Notice of Appeal.

Arguments

Claims 1 to 12 are pending in this case. Claims 1 to 12 were rejected under 35 U.S.C. §103(a) as being unpatentable over Travaly et al. (US Publication 2002/0159441), hereinafter referred as Travaly.

Applicants respectfully submit that the rejections of Applicants' claims in the Final Office Action mailed March 21, 2008 are clearly based on errors, and omit essential elements required to establish a *prima facie* §103 rejection.

This is a second Pre-Appeal Brief Request submitted for the above-identified application. This Request refers to the following arguments of record: 1) first Pre-Appeal Brief Request for Review submitted on November 22, 2006; 2) Response to Office

Action filed on June 6, 2007; and 3) Examiner's Interview Summary mailed on June 11, 2007.

Encrypted acceleration tunnel not a VPN

The Examiner still interprets the claimed encrypted acceleration tunnel, which traverses a wireless network, and is between a VPN acceleration client and a VPN acceleration server, as a VPN tunnel. See Office Action mailed March 21, 2008, page 3, last paragraph, page 5; last paragraph; page 6, second and last paragraphs; and the reasons rejecting claims 2 and 11.

This is not correct.

The fact, that the claimed encrypted acceleration tunnel between the VPN acceleration client and the VPN acceleration server is not a VPN tunnel, has been presented in first Pre-Appeal Brief Request for Review submitted on November 22, 2006, which resulted in re-opening of the prosecution. See first Pre-Appeal Brief Request for Review submitted on November 22, 2006, page 2, 3rd paragraph. This has been further explained during the Examiner Interview held on June 7, 2007, see Response to Office Action filed on June 6, 2007, 3rd paragraph, and Examiner's Interview Summary mailed on June 11, 2007, page 3, lines 4-5.

Furthermore, it should be clear to a person skilled in the art when reading the present specification, and for example, comparing Figure 1 (prior art) and Figure 4, that the VPN tunnel (164) is only between the VPN acceleration server (160) and the VPN switch (112). See Figure 4, and page 8, lines 13-16; page 9, lines 10-12; page 10, lines 15-16; and page 11, lines 10-13 of the present application.

Encrypted acceleration tunnel traversing a wireless network

As discussed in the above and claimed in claim 1, the method of the present application includes "establishing an encrypted acceleration tunnel between a VPN acceleration client and a VPN acceleration server [...] the encrypted acceleration tunnel traversing a wireless network". This acceleration tunnel is a non VPN tunnel and utilizes various wireless communication performance optimization techniques including compression, protocol optimization, caching, and traffic management. See page 3, lines 7-10; page 8, lines 7-9 of the present application; and claim 12. Therefore, it should be abundantly

clear to a person skilled in the art that acceleration refers to wireless communication performance optimization.

Travalvy includes a VPN Accelerator 54, located between a VPN router 56 and an Ethernet hub 120 in Figure 5. However, there is no indication as to what the VPN Accelerator is or does. In fact, there is no description of numeral 54 in Travalvy. There is no reason for a person skilled in the art to reads this VPN Accelerator 54 as an accelerator for a wireless network, i.e. performing wireless communication performance optimization, because VPN Accelerator 54 of Travalvy does not even interface the wireless network. Therefore, Travalvy does not teach or suggest an “encrypted acceleration tunnel traversing a wireless network”.

communicating required data responding to said required data information from one of said plurality of enterprise content servers to said VPN switch

As claimed, a request (required data information) is sent from the VPN acceleration client. The required data responding to the request is communicated from one of the enterprise content servers, first to the VPN switch, then to the VPN acceleration server, and accelerated and encrypted by the VPN acceleration servers using wireless communication performance optimization.

The Examiner asserted that “[a]ny server is a ‘content server’, and the ‘enterprise content’ is application data or web portal data”. Even if this interpretation were correct, which is not, Travalvy failed to teach or suggest the claimed request/response type limitation between the VPN acceleration client and the enterprise content server.

accelerating and encrypting said required data using wireless communication performance optimization by said VPN acceleration server

The Examiner stated that this limitation was inherent. See Office Action mailed March 21, 2008, page 6, last paragraph.

As claimed, the encrypted acceleration tunnel traversing the wireless network is established between the VPN acceleration server and the VPN acceleration client , and the required data is transmitted to the VPN acceleration client after acceleration and encryption at the VPN acceleration server.

The claimed limitation is not inherent.

Inherency

The Examiner used inherency as the ground for rejection throughout the Office Action, (page 5 last paragraph; page 6, 2nd, 5th, and 6th paragraphs; page 7, 5th paragraph; and page 8 last paragraph).

The fact that a certain result or characteristic may occur or be present in the prior art is not sufficient to establish the inherency of that result or characteristic. See MPEP 2112 IV. "To establish inherency, the extrinsic evidence 'must make clear that the missing descriptive matter is necessarily present in the thing described in the reference, and that it would be so recognized by persons of ordinary skill. Inherency, however, may not be established by probabilities or possibilities. The mere fact that a certain thing may result from a given set of circumstances is not sufficient.' " *In re Robertson*, 169 F.3d 743, 745, 49 USPQ2d 1949, 1950-51 (Fed. Cir. 1999). *ibid.* "In relying upon the theory of inherency, the examiner must provide a basis in fact and/or technical reasoning to reasonably support the determination that the allegedly inherent characteristic necessarily flows from the teachings of the applied prior art." *Ex parte Levy*, 17 USPQ2d 1461, 1464 (Bd. Pat. App. & Inter. 1990). *ibid.*

Claimed embodiment non-obvious

To establish *prima facie* obviousness of a claimed invention, all the claim limitations must be taught or suggested by the prior art. In *re Royka*, 490 F.2d 981, 180 USPQ 580 (CCPA 1974). "All words in a claim must be considered in judging the patentability of that claim against the prior art." In *re Wilson*, 424 F.2d 1382, 1385, 165 USPQ 494, 496 (CCPA 1970). The Examiner has not met his burden as at least the foregoing elements of the claim are not taught or suggest by the prior art.

rejection based on assertions that a fact is well-known is not judiciously applied

The Examiner stated that the limitations of encryption and acceleration "over a network via a VPN" in claims 1 and 7 were well known. See Office Action, page 7, last paragraph.

As discussed above, the claimed encrypted acceleration tunnel is not a VPN channel.

Should the Examiner consider that the rejection applies to a non-VPN encrypted acceleration tunnel, Applicants respectfully note that any rejection based on assertions

that a fact is well-known or is common knowledge in the art without documentary evidence to support the examiner's conclusion should be judiciously applied. See MPEP 2144.03 E.

Conclusion

The arguments presented herein are for the purpose of panel review of clear errors in the rejections, and thus Applicants reserve the right to present additional arguments not expressly presented or discussed herein.

For at least the foregoing reasons, Applicants submit that the rejections of claims 1-12 are improper and without basis. Accordingly, Applicants respectfully request that the panel issue a written decision withdrawing the rejection of claims 1-12.

Respectfully Submitted,

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